

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Schlatter

Group Art Unit: 3781

Serial No.: 10/623,588

Examiner: Smalley

Filed : 07/22/2003

Title :DISPENSING CONTAINER

DECLARATION IN ACCORDANCE WITH 37 CFR 1.131

Commissioner of Patents
and Trademarks
Washington, D.C. 20231

Sir:

I, John L. Welsh, do hereby declare:

1. I am the attorney of record representing the inventor of the invention embodied in the above referenced patent application.
2. My office is currently located at 2000 Duke St., Suite 100, Alexandria, VA 22314.
3. I have first hand knowledge of events relating to the conception and reduction to practice of the invention embodied in the above referenced application prior to June 2002.
4. Prior to May 20, 2002 I received a request from the inventor to conduct a patentability search on an invention he titled "clip cap" which is a lip balm container with a cap having overlapping arms as described in the above referenced patent application.
5. On May 20, 2002 the inventor followed up with an email to determine the status of my patentability search (Exhibit A).

6. On June 13, 2002, after discussing the results with the inventor, I provided him with a patentability opinion (Exhibit B).
7. On September 17, 2002 my first draft of the application was sent to the inventor with rough drawings (Exhibit C).
8. After the rough drawings were formalized by our draftsman they were sent to inventor and he provided comments on the application.
9. On July 16, 2003 the final draft of the application was sent to the inventor for execution (Exhibit D).
10. On July 22, 2003 the application was finalized and filed with the U.S. Patent and Trademark Office.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 11/7/08


John L. Welsh

APPENDIX A

John Welsh

From: Gary Schlatter [GSchlatter@Oralabs.com]
Sent: Monday, May 20, 2002 1:49 PM
To: Welsh John (welsh@iplawsolutions.com)
Subject: icymint trade mark

John, we own icymint as an ®. WE are going to start selling breath mints and want to se the name as icymints. The only change being the s on the end. Can we still use an ® or do we start all over with (tm).

Do you have any further word on the chap grip patent search (lip balm holder made of neoprene)?
Any word on the patentability of our "clip cap"

Gary

APPENDIX B

WELSH & FLAXMAN LLC

ATTORNEYS AT LAW

2341 Jefferson Davis Highway, Suite 112
Arlington, VA 22202

PHONE: (703) 920-1122

FAX: (703) 920-3399

June 13, 2002

Gary Schlatter
ORALABS, INC.
2901 South Tejon Street
Englewood, CA 80110

VIA OVERNIGHT COURIER

RE: CHAP ICE KEYCHAIN
Our Docket No. PS-1501

Dear Gary:

We have now completed a search at the U.S. Patent and Trademark Office to determine the patentability of your invention.

Briefly, in view of the prior art uncovered during our search, it appears that patent protection may be available for the concept of a lip balm container having a cap with a clasp structure defined by two overlapping arms.

Description of the Invention

The invention relates to a lip balm container having a cap with a clasp for ready attachment to a lanyard or other support structure. The cap includes a clasp structure including first and second overlapping arms. The first and second overlapping arms form a clasping structure which may be engaged by simply passing a string, or other structure, between the arms until the string reaches the central enclosed portion of the clasp.

List of References

As a result of the search, the following patents were developed:

<u>Patent No.</u>	<u>Inventor</u>
D102,151	Stein et al.
D341,227	Lang et al.
D347,297	Vesco
D374,611	Bonoan et al.

<u>Patent No.</u>	<u>Inventor</u>
D409,830	Stafford
D433,562	Redlinger
D434,896	Haugh et al.
D446,355	Weinstock
D448,524	Colla
3,306,266	McCunney
5,067,836	Khan
5,682,981	Sudborough

Field of Search

For the record, our search was conducted at the U.S. Patent and Trademark Office in the areas most likely to contain pertinent prior art, particularly:

<u>Class</u>	<u>Subclasses</u>
24	3.1, 3.7, 3.11 and 3.12
206	37.1 and 38.1
224	601, 602, 616 and 617
401	104
D3	208
D28	73, 76, 77, 85, 87 and 88

In addition, our manual search was supplemented by conducting a computerized keyword search through the full text of all U.S. patents and published applications issued since 1971.

Our search was conducted on the EAST system of the U.S. Patent and Trademark Office. The EAST system purports to maintain complete integrity of all patents classified in the various subclasses. As such, manual integrity checks were not performed for this search.

Discussion of References

U.S. Design Patent No. 374,611 to Bonoan et al. discloses a swivel clip and attached case. The swivel clip and case includes an upwardly extending clip structure with a housing apparently depending therefrom.

U.S. Patent Nos. D102,151 to Stein et al., 5,067,836 to Khan, D341,227 to Lang, D433,562 to Redlinger and D448,524 to Colla disclose lip balm and lipstick containers having a clip or other support structure secured thereto.

Gary Schlatter
June 13, 2002
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The remaining references disclose other lip balm and cosmetic containers including caps which are considered to be of interest.

Conclusion

Based upon the results of our search, it appears that nothing in the prior art discloses a lip balm cap structure offering exactly the same structure as yours. As such, it is our opinion that patent protection may be available for your lip balm cap structure.

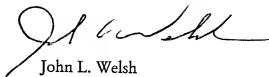
The prior art in this area is very tight and it is likely that an Examiner will attempt to create an obviousness type rejection negating the patentability of your invention. However, we believe your device is sufficiently distinct and we will be able to overcome any such obviousness type rejection.

Based upon our recent discussions, we plan on proceeding with the preparation and filing of a patent application. However, carefully review the prior art and its relation to your invention. If after reviewing the prior art, you decide that you do not wish to pursue patent protection, please contact us as soon as possible.

In connection with the foregoing, you should be aware that our opinions are based only on the patents we have developed during the course of our search. No patent search can ever be exhaustive, since opinions will always vary as to where pertinent prior art may be located. Further, pertinent prior art may be missing from the files of the U.S. Patent and Trademark Office. Thus, there is always the possibility that prior art more pertinent than that encountered in our search is available and was undiscovered by us.

Enclosed with this report are copies of the above-listed patents. An invoice for our services will follow under separate cover. If you have any questions with regard to the foregoing, or if we can be of further assistance, please let me know.

Sincerely,



John L. Welsh

JLW:enc
Enclosures

APPENDIX C

WELSH & FLAXMAN LLC

ATTORNEYS AT LAW

2341 Jefferson Davis Highway, Suite 112
Arlington, VA 22202

PHONE: (703) 920-1122

FAX: (703) 920-3399

September 17, 2002

Gary Schlatter
ORALABS, INC.
2901 South Tejon Street
Englewood, CO 80110

VIA OVERNIGHT COURIER

RE: U.S. Patent Application
DISPENSING CONTAINER
Our Docket No. ORA-005

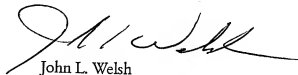
Dear Gary:

Enclosed please find a draft patent application directed to your lip balm container including a clasp. As you will note when you read through the application, additional information is required before finalizing the application. Further, we have asked our draftsman to revise the drawings so as to better show the cap constituting the present invention. When we receive these revised drawings, we will incorporate them into the application and forward a revised draft to your attention.

In the meantime, please review the enclosed application. After reviewing the application, please let us have any comments you may have, as well as the requested additional information, so that the application may be finalized in a timely manner.

As always, if you have any questions, or if we can be of further assistance, please do not hesitate to call.

Sincerely,



John L. Welsh

JLW:enc
Enclosures

APPENDIX D

WELSH & FLAXMAN LLC

ATTORNEYS AT LAW

2341 Jefferson Davis Highway, Suite 112
Arlington, VA 22202

PHONE: (703) 920-1122
FAX: (703) 920-3399

July 16, 2003

URGENT - PLEASE SIGN AND RETURN TO US TOMORROW

Gary Schlatter
ORALABS, INC.
2901 South Tejon Street
Englewood, CO 80110

RE: U.S. Patent Application
DISPENSING CONTAINER
Our Docket No. ORA-005

Dear Gary:

Enclosed please find a final draft of the above-identified patent application.

Please carefully review the enclosed application and let me have your comments and/or changes so that the application may be finalized for filing. If everything appears to be in order, please execute the enclosed Declaration and return it to us along with a check for \$370.00 payable to the COMMISSIONER OF PATENTS AND TRADEMARKS to be used when filing the application.

As always, if you have any questions, or if we can be of further assistance, please do not hesitate to contact me.

Sincerely,



John L. Welsh

JLW:jlk
Enclosures

P.S. We still have not received the executed documents for the Roger Cousins application.